

# George Mason University Instructional Foundation, Inc.

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Office of the President

March 30, 2006

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands* – WT Docket No. 03-66 – **WRITTEN EX PARTE PRESENTATION**

Dear Ms. Dortch:

I am writing on behalf of the George Mason University Instructional Foundation, Inc. (GMUIF) to express our strong opposition to recent proposals by the National ITFS Association (NIA) and the Catholic Television Network (CTN) to restrict the maximum permissible term of Educational Broadband Service (EBS) spectrum leases. While no doubt well-meaning, these organizations are, once again, advocating paternalistic Commission intervention in the EBS leasing process that threatens to undermine the economic viability of most EBS operations.

GMUIF has one of the most extensive 2.5 GHz systems in the United States, operating throughout the greater metropolitan Washington, D.C. area since 1981. Although perhaps best known at the Commission for providing the Capitol Connection service that, among other things, transmits the Commission's open meetings to the Washington business community via EBS, we also utilize our 2.5 GHz band spectrum extensively for distance learning and other educational purposes. We currently lease excess capacity on our EBS facilities to Clearwire and on our BRS facilities to Sprint Nextel.

After twenty-five years in this arena, GMUIF recognizes one basic fact – the overwhelming majority of EBS licensees in the United States would not be able to provide any educational service without the financial and operational support generated through excess capacity leasing. One need only look at EBS usage today. Except for a handful of very fortunate systems that are totally self-supporting (of which GMUIF is one), the evidence suggests that many EBS stations are essentially dark, with no financial ability to provide educational services until their commercial lessees deploy new broadband networks and provide space on

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them for the licensees. Any hope the Commission has of reinvigorating EBS depends, then, on establishing a viable leasing regulatory model.

There have been studies strongly indicating that leases need to have long terms if commercial operators are to be attracted to the 2.5 GHz band. There is absolutely no evidence that a mandated maximum lease term of less than 30 years, or of 30 years with Commission imposed restrictions, will attract the billions of dollars in capital needed to roll out new broadband services at 2.5 GHz. Unfortunately, given these economic facts of life, the proposals recently advanced by NIA and CTN are likely to drive capital investment from, rather than to, the EBS spectrum.

NIA, for example, would limit leases to just 25 years, substantially below what the record shows is needed here to generate substantial investment. CTN, on the other hand, expresses its willingness to accept leases of 30 years duration. While that is a step in the right direction, CTN undermines the benefits of its own proposal by suggesting that the Commission require that every new EBS lease in excess of 15 years “must include terms which provide the EBS licensee at the 15th year and every 5 years thereafter, with the ability to review its educational use requirements so as to ensure the efficient and effective use of the EBS licensee’s reserved capacity for educational purposes in light of changes in educational needs, technology, and other relevant factors.” Quite frankly, GMUIF has no idea what would be required of the commercial system operator under such a provision, and we doubt that anyone thinking of investing capital to the 2.5 GHz band will know either. Does it mean that if the licensee decides it needs additional spectrum, the commercial operator has to give up some of the spectrum it has leased? Does it mean that if the licensee decides it needs new equipment, the commercial operator must provide it? Does it mean that if the licensee decides it needs more money, the commercial operator has to pay more for the spectrum?

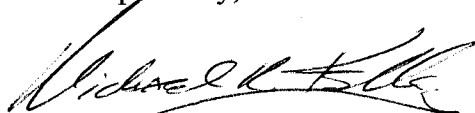
And therein lies the problem – the uncertainty resulting from this provision will steer potential investment from the EBS band to any one of the myriad other bands where system operators can be sure of the terms and conditions governing their spectrum access. What NIA and CTN ignore here is that every time the Commission has adopted rules to protect EBS licensees from the real world, those rules have backfired. If the Commission adopts the CTN proposal for mandatory contractual language, the same is likely to happen – investment will be diverted to other bands where spectrum access is certain, and the EBS community will be denied the financial and operational support that is critical to its growth. And if the Commission imposes a 25 year limit on leases as NIA proposes, again investment in EBS will be put off to the detriment of EBS licensees.

It is time for a different approach – one that allows EBS licensees the flexibility to craft agreements that meet their own needs. GMUIF certainly agrees that every EBS licensee must consider its future needs when negotiating its spectrum lease agreements, and

encourages NIA and CTN to launch campaigns to educate their constituents as to the various issues. However, there is no reason for the Commission to dictate specific contractual language, particularly where that language is so vague that it will deter capital investment in the band. Each EBS licensee is going to have particular needs, both immediate and for the future. It is the individual EBS licensee, and not the Commission, that is best able to identify those needs and negotiate agreements that satisfy them. The Commission has consistently expressed confidence in its *Secondary Markets* policies for promoting the leasing of spectrum in the public interest. Those policies appear to have worked well over the fourteen months since the Commission eliminated its EBS lease term limit. After more than two decades of failed Commission command and control over EBS leasing, the Commission should continue to apply those *Secondary Markets* policies here.

Pursuant to Section 1.1206(b)(1), this notice is being filed electronically with the Commission via the Electronic Comment Filing System for inclusion in the public record of the above-reference proceeding. Should you have any questions regarding this presentation, please contact the undersigned.

Respectfully,

A handwritten signature in dark ink, appearing to read "Michael R. Kelley", is written over a horizontal line.

Michael R. Kelley, Ph.D.  
President

cc: Hon. Kevin J. Martin  
Hon. Michael J. Copps  
Hon. Jonathan S. Adelstein  
Hon. Deborah Taylor Tate  
Fred Campbell  
John Giusti  
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